

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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ARI WEITZNER, M.D., P.C.,

Plaintiff,

v.

ORDER
05-CIV-2531 (CBA)(SMG)

NATIONAL PHYSICIANS DATASOURCE LLC,

Defendant.

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Defendant has filed a motion to compel and for sanctions. Docket Entry 31. The motion is based upon plaintiffs' failure to make timely production of certain documents and upon instructions by plaintiffs' counsel not to answer two deposition questions. For the reasons stated below, the motion is denied.

The motion to compel plaintiffs to produce certain documents is apparently moot; it appears from the parties' submissions that the documents have now been produced. Defendant points out that the documents were not received until the day after its motion was filed, *see* docket entry 33 at 1, and seeks to have this court order plaintiffs to pay its attorneys' fees. However, the e-mail exchange attached to plaintiffs' opposition suggests that this matter could have been resolved through better communication between counsel and without motion practice. Defendant's counsel bears at least some responsibility in this regard. This aspect of the motion is accordingly denied.

With respect to the instructions by plaintiffs' counsel not to answer certain deposition questions, defendant is correct that an instruction not to answer is generally not warranted unless a claim of privilege would otherwise be compromised. *See* Fed. R. Civ. P. 30(d)(1). Despite that, no sanctions are warranted here. First, one of the "questions" was not a question at all, but

an instruction to the witness to read a portion of a document aloud. Second, plaintiffs argue, albeit with weak justification, that the second instruction was intended to avoid annoyance or embarrassment, and was therefore appropriately given so that a motion under Federal Civil Rule 30(d)(4) could be presented. This is an appropriate basis for an instruction not to answer a question. *See* Fed. R. Civ. P. 30(d)(1). Finally, the two questions at issue were peripheral to the matters at issue, and the court is not convinced that the relief sought is necessary to ensure the orderly progress of discovery or the disclosure of all discoverable information.

For these reasons, defendant's motion to compel and for sanctions is denied.

SO ORDERED.

_____/s/_____
STEVEN M. GOLD
United States Magistrate Judge

Brooklyn, New York
September 22, 2006

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